U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH V. HARTER and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Auburn, Wash.

Docket No. 95-3032; Submitted on the Record;
Issued February 13, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to a schedule award for loss of hearing; (2) whether appellant's carcinoid syndrome is causally related to his employment; and (3) whether appellant's employment-related headaches ended by May 31, 1994.

The schedule award provision of the Federal Employees' Compensation Act (hereinafter the Act) provides for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.[1] The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office of Workers' Compensation Programs.[2] For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be a uniform standard applicable to all claimants.[3] The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office,[4] and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[5]

The Office evaluates industrial hearing loss in accordance with the standards contained in the *Guides* using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and the "fence" of 25 decibels is deducted since, as

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[1] 5 U.S.C. § 8107.

[2] *Richard Beggs*, 28 ECAB 387 (1977).

[3] *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

[4] FECA Program Memorandum No. 272 (issued February 24, 1986).

[5] *Danniel C. Goings*, 37 ECAB 781 (1986).

the *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.

In a report dated July 14, 1992, Dr. Constantine Palaskas, a Board-certified otolaryngologist to whom the Office referred appellant, applied the standards from the A.M.A., *Guides* to an audiogram made that day and concluded that, under these standards, appellant had a zero percent hearing loss. In a report dated July 9, 1993, Dr. Dhaval Dhru, a Board-certified otolaryngologist to whom the Office referred appellant, applied the standards from the A.M.A., *Guides* to an audiogram made on June 29, 1993 and concluded that, under these standards, appellant had a zero percent hearing loss. Appellant has presented no medical evidence that he has a ratable hearing loss under the Office's standards. The Board therefore finds that appellant has not established that he is entitled to a schedule award for loss of hearing.

The Board finds that appellant's carcinoid syndrome was not caused by his employment, but that the evidence establishes that factors of his employment temporarily aggravated the symptoms of this syndrome.

In a report dated October 9, 1992, Dr. David F. Cawthon, a Board-certified neurologist to whom the Office referred appellant, stated that "carcinoid syndrome is not caused by any occupational source." In a report dated September 28, 1992, Dr. Edward J. Przasnyski, a Board-certified endocrinologist and one of appellant's attending physicians, indicated appellant's carcinoid syndrome was "secondary to excess pancreatic polypeptide secretion without obvious tumor." In a report dated February 7, 1994, Dr. Peter S. Hartwell, a Board-certified gastroenterologist to whom the Office referred appellant, stated that appellant's carcinoid syndrome was "a very rare condition which arises spontaneously and unpredictably, and to my knowledge under no specific environmental stimuli." There is no medical evidence that factors of appellant's employment caused his carcinoid syndrome.

The medical evidence, however, is sufficient to establish that the symptoms of appellant's carcinoid syndrome were aggravated by factors of his employment. In a report dated September 1, 1993, Dr. Larry D. Stonesifer, a Board-certified endocrinologist and one of appellant's attending physicians, stated:

> "The work factors identified in the statement of accepted facts could worsen the condition. It is known that stress sometimes can precipitate the spells that one sees with a carcinoid syndrome, although to my knowledge very little information is available about pancreatic polypeptide-secreting tumors.
>
> "The medical mechanics of how the work factors may have impacted the condition I think would be clearly stress related, and as noted, although flushing and diarrhea may occur spontaneously in patients with carcinoid syndrome, some patients note factors that seem to evoke attacks, such as physical exertion, emotional upset, heat, or sometimes even eating."

In a report dated September 17, 1992, Dr. Michael Ruthrauff, a Board-certified psychiatrist, stated:

> "Environmental stress usually results in a hyperarousal state in the individual who is undergoing the stress. This normal physiological response to environmental stress magnifies and contributes to an increased symptomatology of his underlying medical problem, carcinoid syndrome.
>
> "A general definition for stress would include any characteristics in the environment that had a high demand characteristic to them; that is, environmental situations which result in an increased demand on the part of the individual in order to respond to the situation cues. When a person is under stress, the arousal state that is induced by the stress physiologically worsens the carcinoid syndrome symptoms, often [to] an incapacitating degree, which further deteriorates the individual's capacity to perform in the work situation."

Dr. Hartwell's responses to the Office's queries on whether appellant's carcinoid syndrome was aggravated by his employment are equivocal and contradictory. In a report dated January 8, 1994, Dr. Hartwell stated, "I do not feel the claimant's work activities have in any way adversely affected his condition." In a report dated February 7, 1994, Dr. Hartwell stated that appellant's "syndrome of flushing may also be worsened by stress. I have no way of establishing whether or not work-related stress plays any role in his actual symptoms." In a report dated March 12, 1994, Dr. Hartwell stated: "The work activities listed in the statement of accepted facts did not cause or worsen his symptoms on a temporal basis. … Although it is true that stress may make irritable bowel syndrome worse and can make carcinoid syndrome worse, stress is not tantamount to work."

The Board finds that the opinions of appellant's attending physicians, Drs. Stonesifer and Ruthrauff, are of more probative weight than that of the Office's referral physician, Dr. Hartwell, and are sufficient to establish that factors of appellant's employment temporarily aggravated the symptoms of his carcinoid syndrome. As the Office's statement of accepted facts acknowledges that appellant's position as a telephone service representative was stressful, the reports of appellant's attending physician were based on an accurate history, with Dr. Stonesifer specifically citing the statement of accepted facts. Both of these attending physicians provided rationale for their opinions that factors of appellant's employment aggravated the symptoms of his carcinoid syndrome, and Dr. Ruthrauff described the physiological mechanism by which this would occur. These reports are sufficient to meet appellant's burden of proof.[6]

The Board's finding that factors of appellant's employment aggravated the symptoms of his carcinoid syndrome, however, does not establish that appellant is entitled to compensation under the Act. Compensation under the Act is payable only under its terms, which are specific

[6] Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. *Froilan Negron Marrero*, 33 ECAB 796 (1982).

as to the method and amount of payment of compensation.[7] For an employee injured while in the performance of duty, section 8102 of the Act provides for payment of compensation for disability for work, and section 8103 provides for payment for medical services, appliances and supplies.[8] Appellant has received treatment, consisting of medication and diagnostic testing, related to his carcinoid syndrome, but this treatment was for the underlying condition -- the pancreatic polypeptide secretory tumor, rather than for the employment-related aggravation of appellant's symptoms. Appellant therefore is not entitled to reimbursement of such medical expenses. Appellant also has not established that he is entitled to compensation for disability for work for the employment-related aggravation of the symptoms of his carcinoid syndrome. Appellant has submitted claim forms for only three periods of disability: November 11 to 18 and 20 to 25, 1991 and April 14, 1992. There is no medical evidence that appellant was disabled by an employment-related aggravation of his symptoms of carcinoid syndrome during these periods. These periods also fall outside the time appellant was performing the stressful position of telephone service representative, which he did not perform between September 9, 1991 and April 1, 1993. There is no medical evidence that any employment-related aggravation extended beyond the date appellant retired from the employing establishment, which appellant indicated was January 9, 1994. Appellant has not established that he is entitled to compensation under the Act for the employment-related aggravation of the symptoms of his carcinoid syndrome.

The Board further finds that the evidence establishes that appellant's employment-related headaches resolved by May 31, 1994.

As noted above, appellant retired from the employing establishment on January 9, 1994. There is no medical evidence that any headaches appellant experienced after his retirement were related to his employment. Dr. Cawthon stated:

> "[M]uscle contraction headaches are either secondary to or aggravated by use of headphones, and also contributed to by the stress of carcinoid syndrome and other employment stress. There is a component of muscle tension headache which may be contributed to in part by the vascular headaches. The vascular headaches themselves are triggered by the carcinoid syndrome. We have also stated that wearing glasses that are too tight may be contributing to muscle tension headaches. We cannot predict when or if his muscle contraction headaches will entirely go away. We would not expect them to go away solely because of stopping the wearing of headphones. This is due to the fact that he has other factors, as noted above, contributing to his muscle contraction or muscle tension headaches."

While this opinion does not indicate that appellant's headaches did or would end upon his cessation of headphone use, it does indicate that the continuation of the headaches would be due to other factors. As appellant no longer experienced employment factors after his retirement, Dr. Cawthon's opinion does not support that appellant had employment-related headaches after

[7] *Helen A. Pryor*, 32 ECAB 1313 (1981).

[8] 5 U.S.C. §§ 8102, 8103.

May 31, 1994. Similarly, Dr. Darlene Chan, a dentist to whom the Office referred appellant, stated:

> "The cephalgia that is related to jaw clenching and stress should decrease if the stress were totally precipitated by the job, as opposed to other personal issues. I would refer to the psychiatric evaluation for this point. Cephalgia which was secondary to temporalis tenderness that was hypothesized as due to pressure from the headphones should have resolved within a few days of the termination of that duty."

This opinion from Dr. Chan is consistent with the opinion of Dr. Nancy Johnson, an osteopath and one of appellant's attending physicians, expressed in her October 8, 1991 report: "When he was examined on October 2, 1991 he stated he hadn't been answering phones since September 9, 1991 and that his TMJ [temporomandibular joint] pain disappeared at work."[9] The medical evidence shows that appellant's headaches, if they continued beyond May 31, 1994, were no longer related to his employment after that date.

The decision of the Office of Workers' Compensation Programs dated June 8, 1995 is modified to find that appellant sustained an employment-related aggravation of the symptoms of his carcinoid syndrome. In all other respects the June 8, 1995 decision is affirmed.

Dated, Washington, D.C.
February 13, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

[9] Drs. Chan disagreed with Dr. Johnson that appellant had TMJ syndrome, and attributed his headaches instead to temporalis muscle spasm.